

1
2
3
4
5
6
7
8
9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13

FEDERAL TRADE COMMISSION,

14 Plaintiff,

15
16
17 v.

18
19 DENNY LAKE, *et al.*,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. SACV 15-00585-CJC(JPRx)

**STIPULATED PRELIMINARY
INJUNCTION ORDER WITH
ASSET FREEZE AND OTHER
EQUITABLE RELIEF AS TO
DEFENDANTS CHAD
CALDARONELLO, DEREK
NELSON, BRIAN PACIOS, AND
JUSTIN MOREIRA, AND RELIEF
DEFENDANT CORTNEY
GONSALVES**

1 Plaintiff Federal Trade Commission (“FTC”) filed this action on April 13,
 2 2015, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act
 3 (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, the Telemarketing and Consumer Fraud
 4 and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-6108, and
 5 the 2009 Omnibus Appropriations Act, Public Law 111-8, Section 626, 123 Stat.
 6 524, 678 (Mar. 11, 2009) (“Omnibus Act”), as clarified by the Credit Card
 7 Accountability Responsibility and Disclosure Act of 2009, Public Law 111-24,
 8 Section 511, 123 Stat. 1734, 1763-64 (May 22, 2009) (“Credit Card Act”), and
 9 amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,
 10 Public Law 111-203, Section 1097, 124 Stat. 1376, 2102-03 (July 21, 2010)
 11 (“Dodd-Frank Act”), 12 U.S.C. § 5538.

12 On April 16, 2015, upon motion by the FTC, this Court issued an *ex parte*
 13 temporary restraining order (“TRO”) with asset freeze, appointment of a Receiver,
 14 and other equitable relief. The FTC and Defendants Brian Pacios, as Chad
 15 Caldaronello, Derek Nelson, and Justin Moreira, and Relief Defendant Cortney
 16 Gonsalves, each representing themselves *pro se*, have consented to the entry of this
 17 Stipulated Preliminary Injunction.

18 **FINDINGS OF FACT**

19 This Court, on the stipulations of the parties, finds that:

20 1. This Court has jurisdiction over the subject matter of this case, and
 21 there is good cause to believe it will have jurisdiction over all parties hereto;

22 2. There is good cause to believe that venue lies properly with this
 23 Court;

24 3. As an agency of the United States, the FTC need not post a security
 25 for the issuance of a preliminary injunction. Fed. R. Civ. P. 65(c).

26 4. There is good cause to believe that Defendants Chad Caldaronello,
 27 Derek Nelson, Brian Pacios, and Justin Moreira have engaged and are likely to
 28

1 continue to engage in acts or practices that violate Section 5(a) of the FTC Act, 15
2 U.S.C. § 45(a), including but not limited to falsely and misleadingly representing,
3 directly or indirectly, expressly or by implication that:

4 a. Defendants will obtain mortgage modifications for consumers
5 that will make their payments substantially more affordable, will substantially
6 lower their interest rates, and/or will help them avoid foreclosure;

7 b. A consumer's trial payments and/or reinstatement fee payment
8 will be held in his or her lender's trust account and either be paid to his or her
9 lender at the end of the trial period to finalize his or her modification, or be
10 refunded;

11 c. Defendants are affiliated with, endorsed or approved by, or
12 otherwise associated with the United States government, Making Home Affordable
13 ("MHA"), the Department of Housing and Urban Development ("HUD"), or the
14 Neighborhood Assistance Corporation of America ("NACA");

15 d. Defendants communicate with specialized departments,
16 divisions, or "higher-ups" at the maker, holder, or servicer of the consumer's
17 dwelling loan;

18 e. The consumer's lender can no longer foreclose on the
19 consumer's house after Defendants receive signed documents and the first payment
20 from the consumer;

21 f. Defendants typically deliver a loan modification within several
22 months;

23 5. There is good cause to believe that Defendants Chad Caldaronello,
24 Derek Nelson, Brian Pacios, and Justin Moreira have engaged and are likely to
25 continue to engage in acts or practices that violate the MARS Rule, 12 C.F.R. Part
26 1015, including but not limited to:
27
28

1 a. Misrepresenting, expressly or by implication, material aspects
2 of any mortgage assistance relief services, in violation of the MARS Rule; 12
3 C.F.R. § 1015.3(b);

4 b. Representing, expressly or by implication, in connection with
5 the advertising, marketing, promotion, offering for sale, sale, or performance of
6 any mortgage assistance relief service, that a consumer cannot or should not
7 contact or communicate with his or her lender or servicer, in violation of the
8 MARS Rule; 12 C.F.R. § 1015.3(a);

9 c. Failing to make disclosures in all general and consumer-
10 specific commercial communications as required by the MARS Rule;
11 12 C.F.R. § 1015.4(a)-(c);

12 d. Asking for or receiving payment of any fee or other
13 consideration before a consumer has executed a written agreement between the
14 consumer and the consumer's loan holder or servicer incorporating the offer of
15 mortgage assistance relief the provider obtained from the consumer's loan holder
16 or servicer in violation of the MARS Rule; 12 C.F.R. § 1015.5(a);

17 6. There is good cause to believe that Defendants Chad Caldaronello,
18 Derek Nelson, Brian Pacios, and Justin Moreira have engaged and are likely to
19 continue to engage in acts or practices that violate the TSR, 16 C.F.R. Part 310,
20 including but not limited to:

21 a. In connection with the telemarketing of Defendants' services,
22 misrepresenting, directly or indirectly, expressly or by implication, any material
23 aspect of the performance, efficacy, nature, or central characteristics of such
24 services, in violation of the TSR; 16 C.F.R. § 310.3(a)(2)(iii);

25 b. In connection with the telemarketing of Defendants' services,
26 misrepresenting, directly or indirectly, expressly or by implication, material
27
28

1 aspects of the nature or terms of Defendants' refund, cancellation, exchange, or
 2 repurchase policies, in violation of the TSR; 16 C.F.R. § 310.3(a)(2)(iv);

3 c. In connection with the telemarketing of Defendants' services,
 4 asking for or receiving payment of any fee or other consideration in advance of
 5 obtaining a loan or other extension of credit after representing a high likelihood of
 6 success in obtaining or arranging a loan or other extension of credit to consumers,
 7 in violation of the TSR; 16 C.F.R. § 310.4(a)(4);

8 7. There is good cause to believe that Relief Defendant Courtney
 9 Gonsalves received funds or assets that can be traced directly to Defendants'
 10 unlawful acts or practices, and that she has no legitimate claim to those funds;

11 8. There is good cause to believe that immediate and irreparable harm
 12 will result from Defendants' ongoing violations of Section 5(a) of the FTC Act,
 13 MARS Rule, and the TSR unless Defendants are restrained and enjoined by Order
 14 of this Court;

15 9. There is good cause to believe that an Order is necessary to prohibit
 16 immediate and irreparable damage to the Court's ability to grant effective final
 17 relief for consumers in the form of monetary restitution and disgorgement of ill-
 18 gotten gains that could occur if they transferred, dissipated, or concealed their
 19 assets or business records; and

20 10. Weighing the equities and considering the FTC's likelihood of
 21 ultimate success, this order is in the public interest.

22 **DEFINITIONS**

23 For the purposes of this Preliminary Injunction, the following definitions
 24 apply:

25 A. "Assets" means any legal or equitable interest in, right to, or claim to,
 26 any and all real and personal property of Defendants or Relief Defendant, or held
 27 for the benefit of Defendants or Relief Defendant, wherever located, whether in the
 28

1 United States or abroad, including but not limited to chattel, goods, instruments,
2 equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or
3 other deliveries, inventory, checks, notes, accounts, credits, receivables (as those
4 terms are defined in the Uniform Commercial Code), shares of stock, futures, all
5 cash or currency, and trusts, including but not limited to a trust held for the benefit
6 of any Defendant or Relief Defendant, any of the Individual Defendants' or Relief
7 Defendant's minor children, or any of the Individual Defendants' or Relief
8 Defendant's spouses, and shall include both existing assets and assets acquired
9 after the date of entry of this order, or any interest therein.

10 B. **"Asset Freeze Accounts"** are accounts that are (1) associated with
11 Asset Freeze Defendants and (2) are maintained at Bank of America with an
12 account number ending in "6164"; are maintained at Bank of America with an
13 account number ending in "4546"; are maintained at Bank of America with an
14 account number ending in "3352"; are maintained at Comerica Bank with an
15 account number ending in "2545"; are maintained at Comerica Bank with an
16 account number ending in "6298"; are maintained at Comerica Bank with an
17 account number ending in "2594"; are maintained at Comerica Bank with an
18 account number ending in "6132"; are maintained at Comerica Bank with an
19 account number ending in "8381"; are maintained at Comerica Bank with an
20 account number ending in "8344"; are maintained at Comerica Bank with an
21 account number ending in "8707"; are maintained at Comerica Bank with an
22 account number ending in "3367"; are maintained at Comerica Bank with an
23 account number ending in "5726"; are maintained at Comerica Bank with an
24 account number ending in "8882"; are maintained at Comerica Bank with an
25 account number ending in "6561"; are maintained at Comerica Bank with an
26 account number ending in "6320"; are maintained at Farmers & Merchants Bank
27 with an account number ending in "1538"; are maintained at JP Morgan Chase
28

1 with an account number ending in “1963”; are maintained at JP Morgan Chase
2 with an account number ending in “0038”; are maintained at JP Morgan Chase
3 Bank with an account number ending in “4854”; are maintained at JP Morgan
4 Chase Bank with an account number ending in “6050”; are maintained at JP
5 Morgan Chase Bank with an account number ending in “6529”; are maintained at
6 JP Morgan Chase Bank with an account number ending in “6636”; are maintained
7 at JP Morgan Chase Bank with an account number ending in “9414”; are
8 maintained at JP Morgan Chase Bank with an account number ending in “0647”;
9 are maintained at JP Morgan Chase Bank with an account number ending in
10 “9828”; are maintained at JP Morgan Chase Bank with an account number ending
11 in “9215”; are maintained at JP Morgan Chase Bank with an account number
12 ending in “0618”; are maintained at JP Morgan Chase Bank with an account
13 number ending in “1855”; are maintained at JP Morgan Chase Bank with an
14 account number ending in “2920”; are maintained at JP Morgan Chase Bank with
15 an account number ending in “6320”; are maintained at JP Morgan Chase Bank
16 with an account number ending in “2666”; are maintained at Wells Fargo Bank
17 with an account number ending in “2347”; are maintained at Wells Fargo Bank
18 with an account number ending in “6854”; are maintained at Wells Fargo Bank
19 with an account number ending in “9082”; or are maintained at Wells Fargo Bank
20 with an account number ending in “1575.”

21 C. **“Asset Freeze Defendants”** means all Individual Defendants, and
22 Relief Defendant Gonsalves.

23 D. **“Assisting others”** includes but is not limited to: (1) performing
24 customer service functions, including, but not limited to, receiving or responding
25 to consumer complaints; (2) formulating or providing, or arranging for the
26 formulation or provision of, any advertising or marketing material, including but
27 not limited to, any telephone sales script, direct mail solicitation, or the design,
28

1 text, or use of images of any Internet website, email, or other electronic
2 communications; (3) formulating or providing, or arranging for the formulation or
3 provision of, any marketing support material or service, including but not limited
4 to, web or Internet Protocol addresses or domain name registration for any Internet
5 websites, affiliate marketing services, or media placement services; (4) providing
6 names of, or assisting in the generation of, potential customers; (5) performing or
7 providing marketing, billing, or payment services of any kind; (6) acting or serving
8 as an owner, officer, director, manager, or principal of any entity; or (7) providing
9 telemarketing services.

10 E. **“Corporate Defendants”** means C.C. Enterprises, Inc. (also d/b/a
11 HOPE Services, Trust Payment Center, and Retention Divisions), and D.N.
12 Marketing, Inc. (also d/b/a HAMP Services and Trial Payment Processing), and
13 their successors, assigns, affiliates, or subsidiaries, and each of them by whatever
14 names each might be known.

15 F. **“Defendants”** means all Individual Defendants, and their successors,
16 assigns, affiliates, subsidiaries, or agents, individually, collectively, or in any
17 combination, and each of them by whatever names each might be known.

18 G. **“Document”** is synonymous in meaning and equal in scope to the
19 terms “document” and “electronically stored information,” as described and used
20 in Federal Rule of Civil Procedure 34(a)(1)(A).

21 H. **“Electronic Data Host”** means any person or entity in the business of
22 storing, hosting, or otherwise maintaining electronically stored information.

23 I. **“Financial Institution”** means any bank, savings and loan institution,
24 credit union, or any financial depository of any kind, including but not limited to,
25 any brokerage house, trustee, broker-dealer, escrow agent, title company,
26 commodity trading company, or precious metal dealer.

1 J. **“Individual Defendants”** means Chad Caldaronello (a/k/a Chad
2 Carlson and Chad Johnson), Derek Nelson (a/k/a Dereck Wilson), Brian Pacios
3 (a/k/a Brian Barry and Brian Kelly), Justin Moreira (a/k/a Justin Mason, Justin
4 King, and Justin Smith), and any other names they might use, have used, be known
5 or have been known.

6 K. **“Mortgage assistance relief product or service”** means any product,
7 service, plan, or program, offered or provided to the consumer in exchange for
8 consideration, that is represented, expressly or by implication, to assist or attempt
9 to assist the consumer with any of the following:

10 1. stopping, preventing, or postponing any mortgage or deed of
11 trust foreclosure sale for the consumer’s dwelling, any repossession of the
12 consumer’s dwelling, or otherwise saving the consumer’s dwelling from
13 foreclosure or repossession;

14 2. negotiating, obtaining, or arranging a modification of any term
15 of a dwelling loan, including a reduction in the amount of interest, principal
16 balance, monthly payments, or fees;

17 3. obtaining any forbearance or modification in the timing of
18 payments from any dwelling loan holder or servicer on any dwelling loan;

19 4. negotiating, obtaining, or arranging any extension of the period
20 of time within which the consumer may (i) cure his or her default on a dwelling
21 loan, (ii) reinstate his or her dwelling loan, (iii) redeem a dwelling, or (iv) exercise
22 any right to reinstate a dwelling loan or redeem a dwelling;

23 5. obtaining any waiver of an acceleration clause or balloon
24 payment contained in any promissory note or contract secured by any dwelling; or

25 6. negotiating, obtaining, or arranging (i) a short sale of a
26 dwelling, (ii) a deed-in-lieu of foreclosure, (iii) or any other disposition of a
27 dwelling loan other than a sale to a third party that is not the dwelling loan holder.
28

1 The foregoing shall include any manner of claimed assistance, including, but not
2 limited to, auditing or examining a consumer's mortgage or home loan application
3 and offering to provide or providing legal services, or offering to sell a consumer a
4 plan or subscription to a service that provides such assistance.

5 L. **"Person"** means any individual, group, unincorporated association,
6 limited or general partnership, corporation or other business entity.

7 M. **"Plaintiff"** means the Federal Trade Commission ("Commission" or
8 "FTC").

9 N. **"Receivership Defendants"** means: C.C. Enterprises, Inc. (also d/b/a
10 HOPE Services, Trust Payment Center, and Retention Divisions); D.N. Marketing,
11 Inc. (also d/b/a HAMP Services and Trial Payment Processing); any entity located
12 at 23161 Mill Creek Drive, Suite 230, Laguna Hills, California 92653 that markets
13 or provides any service that the Final Order in *FTC v. Lakhany*, No. 8:12-cv-337
14 (Feb. 28, 2013) prohibits Brian Pacios from marketing or providing; these entities'
15 subsidiaries, affiliates, divisions, successors, and assigns. "Receivership
16 Defendants" include businesses that lack formal legal structure (such as businesses
17 operating under fictitious business names), but that otherwise satisfy the definition
18 of "Receivership Defendant."

19 O. **"Relief Defendant"** means Cortney Gonsalves and her successors and
20 assigns, and each of them by whatever names each might be known.

21 P. **"Receiver"** means Thomas McNamara of McNamara Benjamin LLP,
22 the receiver appointed by the Court in Section X of the TRO issued on April 16,
23 2015, as well as any subsequent receiver the Court appoints in this action. The
24 term "Receiver" also includes any deputy receivers or agents as may be named by
25 the Receiver.
26
27
28

1 Q. **“Telemarketer”** means any person who, in connection with
2 telemarketing, initiates or receives telephone calls to or from a customer or donor.
3 16 C.F.R. § 310.2(cc).

4 R. **“Telemarketing”** means a plan, program, or campaign (whether or
5 not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310) that is conducted
6 to induce the purchase of goods or services or a charitable contribution by use of
7 one or more telephones.

8 **I. PROHIBITED REPRESENTATIONS**

9 **IT IS THEREFORE ORDERED** that Defendants, Defendants’ officers,
10 agents, servants, employees, and attorneys, and all other persons in active concert
11 or participation with any of them, who receive actual notice of this Order, whether
12 acting directly or indirectly, in connection with the advertising, marketing,
13 promotion, offering for sale, sale, or performance of any mortgage assistance relief
14 service or debt relief service, are restrained and enjoined from misrepresenting or
15 assisting others in misrepresenting, expressly or by implication:

16 A. that any Defendant or any other person typically will obtain for
17 consumers mortgage loan modifications that will make consumers’ payments
18 substantially more affordable, will substantially lower their interest rates, and/or
19 will help them avoid foreclosure;

20 B. that money from the consumer, including but not limited to trial
21 payments and/or reinstatement fee payments, will be held in his or her lender’s
22 trust account and either be paid to his or her lender at the end of the trial period to
23 finalize his or her modification, or be refunded;

24 C. that any Defendant is affiliated with, endorsed or approved by, or
25 otherwise associated with the United States government, the MHA program, HUD,
26 or NACA;

1 D. that any Defendant communicates with specialized departments,
 2 divisions or “higher ups” at the maker, holder, or servicer of a consumer’s dwelling
 3 loan;

4 E. that the consumer’s lender can no longer foreclose on the consumer’s
 5 house after any Defendant has received signed documents and a consumer’s first
 6 payment; and

7 F. that any Defendant can deliver a loan modification within any specific
 8 or general timeframe.

9 **II. DISCLOSURES REQUIRED BY AND REPRESENTATIONS**
 10 **PROHIBITED BY THE MARS RULE**

11 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
 12 agents, servants, employees, and attorneys, and all other persons in active concert
 13 or participation with any of them, who receive actual notice of this Order, whether
 14 acting directly or indirectly, in connection with the advertising, marketing,
 15 promotion, offering for sale, sale, or provision of any mortgage assistance relief
 16 service or debt relief service, are hereby restrained and enjoined from engaging in,
 17 or assisting others in engaging in, the following conduct:

18 A. Misrepresenting, expressly or by implication, any material aspect of
 19 any mortgage assistance relief service, in violation of 12 C.F.R. § 1015.3(b);

20 B. Representing, expressly or by implication, in connection with the
 21 advertising, marketing, promotion, offering for sale, sale or performance of any
 22 mortgage assistance relief service, that a consumer cannot or should not contact or
 23 communicate with his lender or servicer, in violation of 12 C.F.R. § 1015.3(a);

24 C. Failing to make the following disclosure in all general and consumer-
 25 specific commercial communications: “[Name of Company] is not associated with
 26 the government, and our service is not approved by the government or your
 27 lender,” in violation of 12 C.F.R. §§ 1015.4(a)(1) & 1015.4(b)(2);
 28

1 D. Failing to make the following disclosure in all general and consumer-
 2 specific commercial communications: “Even if you accept this offer and use our
 3 service, your lender may not agree to change your loan,” in violation of 12 C.F.R.
 4 §§ 1015.4(a)(2) & 1015.4(b)(3);

5 E. Failing to make the following disclosure in all consumer-specific
 6 commercial communications: “You may stop doing business with us at any time.
 7 You may accept or reject the offer of mortgage assistance we obtain from your
 8 lender [or servicer]. If you reject the offer, you do not have to pay us. If you
 9 accept the offer, you will have to pay us [insert amount or method for calculating
 10 the amount] for our services,” in violation of 12 C.F.R. § 1015.4(b)(1). For the
 11 purposes of this subsection, the amount “you will have to pay” shall consist of the
 12 total amount the consumer must pay to purchase, receive, and use all of the
 13 mortgage assistance relief services that are the subject of the sales offer, including
 14 but not limited to, all fees and charges; and

15 F. Failing, in all general commercial communications, consumer-specific
 16 commercial communications, and other communications in cases where any
 17 Defendant or person has represented, expressly or by implication, in connection
 18 with the advertising, marketing, promotion, offering for sale, or performance of
 19 any mortgage assistance relief service, that the consumer should temporarily or
 20 permanently discontinue payments, in whole or in part, on a dwelling loan, to place
 21 clearly and prominently, and in close proximity to any such representation the
 22 following disclosure: “If you stop paying your mortgage, you could lose your
 23 home and damage your credit rating,” in violation of 12 C.F.R. § 1015.4(c).

24 **III. ADVANCE FEE PROHIBITION**

25 **IT IS FURTHER ORDERED** that Defendants, Defendants’ officers,
 26 agents, servants, employees, and attorneys, and all other persons in active concert
 27 or participation with any of them, who receive actual notice of this Order, whether
 28

1 acting directly or indirectly, in connection with the advertising, marketing,
2 promotion, offering for sale, sale, or provision of any mortgage assistance relief
3 service or debt relief service, or in connection with telemarketing, are hereby
4 restrained and enjoined from asking for, or receiving payment of, any fee or other
5 consideration until a consumer has executed a written agreement between the
6 consumer and the consumer's loan holder or servicer incorporating the offer of
7 mortgage assistance relief the Defendants obtained on the consumer's behalf.

8 **IV. PRESERVATION OF RECORDS AND TANGIBLE THINGS**

9 **IT IS FURTHER ORDERED** that Defendants, and each of their
10 successors, officers, agents, servants, employees, and attorneys, and those persons
11 in active concert or participation with any of them, who receive actual notice of
12 this Order by personal service or otherwise, whether acting directly or indirectly, in
13 connection with the advertising, marketing, promotion, offering for sale, sale, or
14 provision of any mortgage assistance relief service or debt relief service, are
15 hereby restrained and enjoined from destroying, erasing, mutilating, concealing,
16 altering, transferring, or otherwise disposing of, in any manner, directly or
17 indirectly, any documents or records that relate to the business practices, or
18 business and personal finances, of Defendants, or an entity directly or indirectly
19 under the control of Defendants.

20 **V. DISABLEMENT OF WEBSITES AND PRESERVATION OF**
21 **ELECTRONICALLY STORED INFORMATION**

22 **IT IS FURTHER ORDERED** that, immediately upon service of the Order
23 upon them, (1) any person hosting any Internet website, server, or "cloud-based"
24 electronic storage for, or on behalf of, any Defendant, and (2) Defendants,
25 Defendants' officers, agents, servants, employees, and attorneys, and all other
26 persons in active concert or participation with any of them, who receive actual
27 notice of this Order, whether acting directly or indirectly, shall:
28

1 A. Immediately take all necessary steps to ensure that any Internet
2 website used by Defendants for the advertising, marketing, promotion, offering for
3 sale, sale, or provision of any mortgage assistance relief service, and containing
4 statements or representations prohibited by Sections I and II of this Order cannot
5 be accessed by the public; and

6 B. Prevent the alteration, destruction or erasure of any (1) Internet
7 website used by Defendants for the advertising, marketing, promotion, offering for
8 sale, sale, or provision of any mortgage assistance relief service, by preserving
9 such websites in the format in which they are maintained currently and (2) any
10 electronically stored information stored on behalf of Corporate Defendants, or
11 entities in active concert or participation with any of them.

12 **VI. SUSPENSION OF INTERNET DOMAIN NAME REGISTRATIONS**

13 **IT IS FURTHER ORDERED** that any domain name registrar shall
14 suspend the registration of any Internet website used by Defendants for the
15 advertising, marketing, promotion, offering for sale, sale, or provision of any
16 mortgage assistance relief service, and containing statements or representations
17 prohibited by Sections I and II of this Order and provide immediate notice to
18 counsel for the FTC and the Receiver of any other Internet domain names
19 registered by Defendants, Defendants' officers, agents, servants, employees, and
20 attorneys, and all other persons in active concert or participation with any of them
21 who receive actual notice of this Order by personal service or otherwise.

22 **VII. PROHIBITION ON USE OF CUSTOMER INFORMATION**

23 **IT IS FURTHER ORDERED** that Defendants, and Defendants' officers,
24 agents, directors, servants, employees, salespersons, and attorneys, as well as all
25 other persons or entities in active concert or participation with them, who receive
26 actual notice of this Order by personal service or otherwise, whether acting directly
27 or through any trust, corporation, subsidiary, division, or other device, are hereby
28

1 restrained and enjoined from using, benefitting from, selling, renting, leasing,
2 transferring, or otherwise disclosing the name, address, telephone number, email
3 address, Social Security number, credit card number, debit card number, bank
4 account number, any financial account number, or any data that enables access to a
5 customer's account, or other identifying information of any person which any
6 Defendant obtained prior to entry of this Order in connection with the marketing or
7 sale of any good or service, including those who were contacted or are on a list to
8 be contacted by any of the Defendants; provided that Defendants may disclose
9 such identifying information to a law enforcement agency or as required by any
10 law, regulation, or court order.

11 **VIII. ASSET FREEZE**

12 **IT IS FURTHER ORDERED** that Asset Freeze Defendants, and their
13 officers, agents, servants, employees, and attorneys, and all other persons or
14 entities directly or indirectly under the control of any of them, including any
15 Financial Institution, and all other persons or entities in active concert or
16 participation with any of them who receive actual notice of this Order are hereby
17 restrained and enjoined from directly or indirectly:

18 A. Transferring, liquidating, converting, encumbering, pledging, loaning,
19 selling, concealing, dissipating, disbursing, assigning, spending, withdrawing,
20 granting a lien or security interest or other interest in, or otherwise disposing of any
21 Assets, or any interest therein, wherever located, including outside the United
22 States, that are:

- 23 1. Asset Freeze Accounts;
- 24 2. owned or controlled, directly or indirectly, by any Asset Freeze
25 Defendant, in whole or in part, or held, in whole or in part, for the benefit of any
26 Asset Freeze Defendant;
- 27
- 28

1 3. in the actual or constructive possession of any Asset Freeze
2 Defendant; or

3 4. owned, controlled by, or in the actual or constructive possession
4 of any corporation, partnership, or other entity directly or indirectly owned,
5 managed, or controlled by, or under common control with any Asset Freeze
6 Defendant, including any entity acting under a fictitious name owned by or
7 controlled by any Asset Freeze Defendant, and any Assets held by, for, or under
8 the name of any Asset Freeze Defendant at any bank or savings and loan
9 institution, or with any broker-dealer, escrow agent, title company, commodity
10 trading company, payment processing company, precious metal dealer, or other
11 Financial Institution or depository of any kind;

12 B. Opening or causing to be opened any safe deposit boxes titled in the
13 name of any Asset Freeze Defendant (including, without limitation, Defendant
14 Caldaronello's J.P. Morgan Chase safe deposit box no. 10000001125574);

15 C. Incurring charges or cash advances on any credit card, debit card, or
16 checking card issued in the name, singly or jointly, of any Asset Freeze Defendant;

17 D. Obtaining a personal or secured loan;

18 E. Incurring liens or encumbrances on real property, personal property or
19 other Assets in the name, singly or jointly, of any Asset Freeze Defendant; and

20 F. Cashing any checks or depositing any money orders or cash received
21 from consumers, clients, or customers of any Asset Freeze Defendant.

22 **IT IS FURTHER ORDERED** that the Assets affected by this Section shall
23 include: (1) all Assets of Asset Freeze Defendants as of the time the TRO was
24 entered; and (2) for Assets obtained after the entry of the TRO, those Assets of
25 Asset Freeze Defendants that are derived, directly or indirectly, from the
26 Defendants' activities as described in the Commission's Complaint, filed on April
27 13, 2015.
28

1 **IX. RETENTION OF ASSETS AND DOCUMENTS BY THIRD PARTIES**

2 **IT IS FURTHER ORDERED** that any financial or brokerage institution,
3 business entity, electronic data host, or person served with a copy of this Order that
4 holds, controls, or maintains custody of any account, document, electronically
5 stored information, or asset of, on behalf of, in the name of, for the benefit of,
6 subject to withdrawal by, subject to access or use by, or under the signatory power
7 of any Defendant or Relief Defendant, or other party subject to Section VIII above,
8 or has held, controlled, or maintained any such account, document, electronically
9 stored information, or asset, shall:

10 A. Hold, preserve, and retain within such entity's or person's control, and
11 prohibit the withdrawal, removal, alteration, assignment, transfer, pledge,
12 hypothecation, encumbrance, disbursement, dissipation, conversion, sale,
13 liquidation, or other disposal of such account, document, electronically stored
14 information, or asset held by or under such entity's or person's control, except as
15 directed by further order of the Court;

16 B. Provide the FTC and the FTC's agents immediate access to
17 electronically stored information stored, hosted, or otherwise maintained on behalf
18 of Defendants or Relief Defendant for forensic imaging;

19 C. Deny access to any safe deposit boxes that are either titled in the
20 name, individually or jointly, or subject to access by, any Defendant, Relief
21 Defendant, or other party subject to Section VIII above; and

22 D. Provide to counsel for the FTC, within five (5) business days after
23 being served with a copy of this Order, a sworn statement setting forth:

24 1. the identification of each account or asset titled in the name,
25 individually or jointly, or held on behalf of or for the benefit of, subject to
26 withdrawal by, subject to access or use by, or under the signatory power of any
27
28

1 Defendant, Relief Defendant, or other party subject to Section VIII above, whether
2 in whole or in part;

3 2. the balance of each such account, or a description of the nature
4 and value of such asset, as of the close of business on the day on which this Order
5 is served;

6 3. the identification of any safe deposit box that is either titled in
7 the name of, individually or jointly, or is otherwise subject to access or control by,
8 any Defendant or Relief Defendant, or other party subject to Section VIII above,
9 whether in whole or in part; and

10 4. if the account, safe deposit box, or other asset has been closed
11 or removed, the date closed or removed, the balance on said date, and the name or
12 the person or entity to whom such account or other asset was remitted;

13 E. Provide counsel for the FTC, within five (5) business days after being
14 served with a request, copies of all documents pertaining to such account or asset,
15 including but not limited to: account statements, account applications, signature
16 cards, checks, deposit tickets, transfers to and from the accounts, wire transfers, all
17 other debit and credit instruments or slips, 1099 forms, and safe deposit box logs;
18 and

19 F. Cooperate with all reasonable requests of the FTC relating to this
20 Order's implementation.

21 **IT IS FURTHER ORDERED** that the accounts subject to this provision
22 include (a) all assets of each Defendant or Relief Defendant deposited as of the
23 time the TRO was entered on April 16, 2015, at 10:30 a.m. Pacific Standard Time,
24 and (b) those assets deposited after entry of the TRO that are derived from the
25 actions alleged in Plaintiff's Complaint.

26 **IT IS FURTHER ORDERED** that, in addition to the information and
27 documents required to be produced pursuant to other provisions herein, the FTC is
28

1 granted leave, pursuant to Fed. R. Civ. P. 45, to subpoena documents immediately
 2 from any financial or brokerage institution, business entity, electronic data host, or
 3 person served with a copy of this Order that holds, controls, or maintains custody
 4 of any account, document, electronically stored information, or asset of, on behalf
 5 of, in the name of, for the benefit of, subject to withdrawal by, subject to access or
 6 use by, or under the signatory power of any Defendant, Relief Defendant, or other
 7 party subject to Section VIII above, or has held, controlled, or maintained any such
 8 account, document, electronically stored information, or asset, and such financial
 9 or brokerage institution, business entity, electronic data host or person shall
 10 respond to such subpoena within three (3) business days after service. The FTC
 11 may effect service by electronic mail.

12 **X. COOPERATION WITH THE RECEIVER**

13 **IT IS FURTHER ORDERED** that Defendants and Relief Defendant shall
 14 fully cooperate with and assist the Receiver. Defendants' and Relief Defendant's
 15 cooperation and assistance shall include, but not be limited to, providing any
 16 information to the Receiver that the Receiver deems necessary to exercise the
 17 authority and discharge the responsibilities of the Receiver under this Order;
 18 providing any login, password, or biometric identifier required to access any
 19 computer or electronic files or information in or on any medium; and advising all
 20 persons who owe money to the Receivership Defendants that all debts should be
 21 paid directly to the Receiver. Defendants and Relief Defendant are hereby
 22 restrained and enjoined from directly or indirectly:

- 23 A. Transacting any of the business of the Receivership Defendants;
- 24 B. Excusing debts owed to the Receivership Defendants;
- 25 C. Destroying, secreting, defacing, transferring, or otherwise altering or
 26 disposing of any documents of the Receivership Defendants;

1 D. Transferring, receiving, altering, selling, encumbering, pledging,
2 assigning, liquidating, or otherwise disposing of any Assets owned, controlled, or
3 in the possession or custody of, or in which an interest is held or claimed by, the
4 Receivership Defendants, or the Receiver;

5 E. Failing to provide any assistance or information requested by the
6 Receiver in connection with obtaining possession, custody, or control of any
7 Assets within the receivership estate that the Receiver or the FTC has identified; or

8 F. Doing any act or thing whatsoever to interfere with the Receiver's
9 taking and keeping custody, control, possession, or managing of the Assets or
10 documents subject to this receivership; or to harass or interfere with the Receiver
11 in any way; or to interfere in any manner with the exclusive jurisdiction of this
12 Court over the Assets or documents of the Receivership Defendants; or to refuse to
13 cooperate with the Receiver or the Receiver's duly authorized agents in the
14 exercise of their duties or authority under any Order of this Court.

15 **XI. TRANSFER OF FUNDS TO THE RECEIVER BY FINANCIAL**
16 **INSTITUTIONS AND OTHER THIRD PARTIES**

17 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order,
18 any financial or brokerage institution or depository, escrow agent, title company,
19 commodity trading company, payment processing company, or trust shall
20 cooperate with all reasonable requests of counsel for the FTC and the Receiver
21 relating to implementation of this Order, including transferring funds at the
22 Receiver's direction.

23 **XII. RECEIVER'S REPORTS**

24 **IT IS FURTHER ORDERED** that the Receiver shall report to this Court
25 on or before the date set for the hearing regarding the Preliminary Injunction,
26 regarding: (1) the steps taken by the Receiver to implement the terms of this
27 Order; (2) the value of all liquidated and unliquidated Assets of the Receivership
28

Defendants; (3) the sum of all liabilities of the Receivership Defendants; (4) the steps the Receiver intends to take in the future to: (a) prevent any diminution in the value of Assets of the Receivership Defendants; (b) pursue receivership Assets from third parties; and (c) adjust the liabilities of the Receivership Defendants, if appropriate; and (5) any other matters which the Receiver believes should be brought to the Court's attention. Provided, however, if any of the required information would hinder the Receiver's ability to pursue receivership Assets, the portions of the Receiver's report containing such information may be filed under seal and not served on the parties. Further provided, however, that if the remaining non-stipulating Defendants in this action subsequently stipulate to a Preliminary Injunction (or a Preliminary Injunction is otherwise entered against the remaining non-stipulating Defendants), and the Receiver has not already submitted the Report this section requires, then the Receiver shall report to this Court regarding the matters herein within fourteen days of the last Preliminary Injunction entered.

XIII. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED that:

A. Nothing herein modifies any existing Order in any way, including the Orders governing Defendant Pacios and nonparty Assurity Law Group. *See FTC v. Lakhany*, No. SACV 12-00337. The FTC may take discovery and pursue other measures any existing Order permits.

B. The FTC may obtain credit reports concerning any Defendant or Relief Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to the FTC.

C. Pending further order of this Court, no Individual or Relief Defendant has any obligation to disclose, produce, or turn over the contents of any safe (in his or her residence) the Corporate Defendants purchased with corporate assets paid

1 directly from an Asset Freeze Account to a safe retailer. However, also pending
 2 further order of this Court, any Individual or Relief Defendant may not access,
 3 remove, dissipate, or otherwise disturb the contents of any such safe.

4 D. No Individual or Relief Defendant is obligated to disclose or produce
 5 contents they are able to control or access on any social media platform (including,
 6 without limitation, Facebook, Twitter, Instagram, Pinterest, and LinkedIn), except
 7 as they may be obligated to disclose such material pursuant to the Orders
 8 governing Defendant Pacios and nonparty Assurity Law Group, *see FTC v.*
 9 *Lakhany*, No. SACV 12-00337, or after the Court authorizes discovery that may
 10 encompass such material in this action. However, no Individual or Relief
 11 Defendant may destroy or delete such material.

12 **XIV. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY**
 13 **DEFENDANTS**

14 **IT IS FURTHER ORDERED** that each Defendant and Relief Defendant,
 15 within five (5) business days of receipt of this Order, must submit to counsel for
 16 the FTC a truthful sworn statement acknowledging receipt of this Order.

17 **XV. CORRESPONDENCE WITH PLAINTIFF**

18 **IT IS FURTHER ORDERED** that, for the purposes of this Order, because
 19 mail addressed to the FTC is subject to delay due to heightened security screening,
 20 all correspondence and service of pleadings on Plaintiff shall be sent via electronic
 21 submission or Federal Express to:

22 Jonathan Cohen
 23 Miriam Lederer
 24 Federal Trade Commission
 25 600 Pennsylvania Ave., NW, Mail Drop CC-9528
 26 Washington, DC 20580
 27 Telephone: (202) 326-2551, -2975
 28 Fax: (202) 326-3197
 Jcohen2@ftc.gov, mlederer@ftc.gov

1 **XVI. SERVICE OF THIS ORDER**

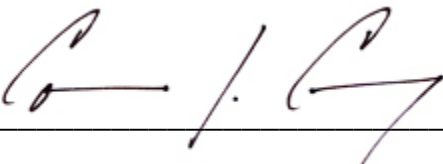
2 **IT IS FURTHER ORDERED** that copies of this Order may be served by
3 facsimile, email, personal or overnight delivery, U.S. Mail, or hand-delivery, by
4 agents and employees of the FTC or the Receiver, any state or federal law
5 enforcement agency, or by private process server, upon any Defendant, Relief,
6 Defendant, Financial Institution or other entity or person that may have possession,
7 custody, or control of any documents or assets of any Defendant or Relief
8 Defendant, or that may otherwise be subject to any provision of this Order.
9 Service upon any branch or office of any Financial Institution shall effect service
10 upon the entire Financial Institution.

11 **XVII. RETENTION OF JURISDICTION**

12 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of
13 this matter for all purposes of construction, modification, and enforcement of this
14 Order.

15
16 **IT IS SO ORDERED**, this 29th day of April, 2015.

17
18
19
20
21
22 Dated: April 29, 2015

23 
24 _____
25 CORMAC J. CARNEY
26 UNITED STATES DISTRICT JUDGE
27
28